IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, v. BRIAN L. WILLIAMS, DEFENDANT.	CASE NO. 5:16-cr-00326-1 JUDGE JOHN R. ADAMS SENTENCING MEMORANDUM

The Defendant, Brian L. Williams, by and through his attorney, Robert Duffrin, hereby submits this Sentencing Memorandum for the purpose of addressing issues and assisting in the imposition of a sentence that is not greater than necessary to satisfy the goals set forth in 18 U.S. C. § 3553(a).

Respectfully submitted,

/s/*Robert Duffrin*

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SENTENCING MEMORANDUM FOR BRIAN L. WILLIAMS

I. RELEVANT FACTS

This case was initiated on information obtained from confidential sources cultivated by the police regarding the activities of persons occupying 487 Wirth Avenue, Akron, Ohio — specifically Brian Williams and Terrance Ford. On July 26, 2016 the Akron Police Department executed a search warrant at 487 Wirth Avenue, Akron, Ohio 44312. As a result of the execution of the warrant Fentanyl was discovered in the residence.

On October 13, 2016, Brian Williams was indicted for possessing between 40 and 400 grams of Fentanyl. (ECF #1). On November 23, 2016, a motion to suppress the evidence, challenging the issuance and execution of the search warrant, was filed. (ECF #16).

On December 5, 2016, the defendant requested the Court to dismiss defense counsel. (ECF #22). Counsel and Defendant had limited communication during the period between the request to dismiss counsel and the pretrial on December 20, 2016. During the same period of time the defendant filed his own supplemental to the motion to suppress. During the December 20, 2016 pretrial the defendant withdrew his motion to dismiss counsel.

The Court formally denied the motion to suppress on December 30, 2016, but had previously informed the parties that the motion would be denied. The parties had discussions regarding case resolution with the government between December 20, 2017 and up and until December 22, 2017. These discussions were comprehensive and varying. On December 22, 2017 the defendant agreed to plead guilty by means of a conditional plea agreement.

The Court informed the parties at the final pretrial on December 27, 2017 that it would not accept the proposed plea agreement. The defendant was faced with an immediate decision on his remaining options. The defendant's case was set for trial for January 3, 2017.

The parties continued to work for a resolution, and on December 30th the defendant entered a plea of guilty. A presentence report was produced. There are no objections to the presentence report.

II. CREDIT FOR ACCEPTANCE OF RESPONSIBILITY

Although the defendant entered a plea between the final pretrial and the scheduled trial date he had clearly demonstrated his acceptance of responsibility for the offense. The defenses asserted in this case regarded legal and Constitutional issues surrounding the investigation and the seizure of the evidence. The defendant did not assert that he has been wrongfully identified or that he bears no responsibility for the drugs in the residence. He indicated his acceptance and remorse to the government and the probation department. The presentence report indicates that the defendant clearly demonstrated acceptance of responsibility for the offense. PSR Pg. 6, ¶ 33-34, PageID #:251.

A defendant must show by a preponderance of the evidence that he clearly shown acceptance of responsibility for the offense. *See U.S. v. Donathan*, 65 F.3d 537, 541 (6th Cir. 1995). The first prong for receiving acceptance points from the total offense level, as provided for in U.S.S.G. §3E1.1, is satisfied by clearly demonstrating acceptance of responsibility. As suggested, the defendant did not defend the case on whether or not he committed the offense, but on the basis of the investigation. Furthermore, the defendant filed a notice of intent to plead guilty on December 22, 2016. (ECF #29). Mr. Williams had executed a plea agreement setting forth the relevant factual basis for the change of plea.

As a result of his intended plea and his ultimate change of plea, along with the negotiations with the government, Brian Williams would argue that he has clearly demonstrated his acceptance of responsibility for the offense. Any delay in entering his change of plea was based on the consideration of his options and the waiver of some of his appellate rights, along with his limited mental capacity resulting from suffering multiple strokes. Therefore, the defendant is requesting credit for acceptance of responsibility for the offense.

III. REQUESTED CONSIDERATION FOR A DEPARTURE BASED ON PHYSICAL CONDITION U.S.S.G. § 5H1.4

As noted above and on page 11 of the presentence report, the defendant has suffered from numerous strokes. He was receiving government-disability payments for his inability to work as a result of the strokes. Paralysis is evident when speaking with Mr. Williams — the left side of his face is affected. And, after representing him during the course of this case, it is also apparent that his mental capacity has also been affected by the strokes. Mr. Williams is no longer a young man and has recently been treated for high-blood pressure.

Based on these significant physical ailments the defendant is requesting that the Court consider a departure based on physical condition as set forth in U.S.S.G. § 5H1.4.

Any incarceration will not serve to rehabilitate the defendant due to his limited ability to learn and retain information. Mr. Williams, on two separate occasions, has attempted to obtain his GED without success. Additionally, he is unlikely to receive medical treatment that would benefit him while incarcerated. Therefore, any term of incarceration would only serve to afford deterrence and punishment, not to aid the defendant.

IV. CONCLUSION

The defendant is requesting a sentence that is fair and just and not greater than necessary to fulfill the goals of 18 U.S. C. § 3553(a) while taking into consideration that education, training, and care are excluded from goals. Moreover, the defendant also requests credit for acceptance of responsibility as set forth in the presentence report.

Respectfully submitted,

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Certificate of Service

I hereby certify that on April 8, 2017 a copy of foregoing Sentencing Memorandum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

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